

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NORTH SOUND CAPITAL LLC, *et al.*,

v.

MERCK & CO., INC. F/K/A SCHERING-
PLOUGH CORPORATION, *et al.*

03:13-CV-7240 (FLW) (DEA)

GIC PRIVATE LIMITED,

v.

MERCK & CO., INC. F/K/A SCHERING-
PLOUGH CORPORATION, *et al.*

03:13-CV-7241 (FLW) (DEA)

NORTH SOUND CAPITAL LLC, *et al.*,

v.

MERCK & CO., INC., *et al.*

3:14-CV-242 (FLW) (DEA)

GIC PRIVATE LIMITED,

v.

MERCK & CO., INC., *et al.*

3:14-CV-241 (FLW) (DEA)

STIPULATION AND ~~PROPOSED~~ ORDER

WHEREAS, on November 14, 2013, the Plaintiffs in *North Sound Capital LLC, et al. v. Merck & Co., Inc. F/K/A Schering-Plough Corporation, et al.*, No. 3:13 Civ. 7240 and in *GIC Private Limited v. Merck & Co., Inc. F/K/A Schering-Plough Corporation, et al.*, No. 3:13 Civ. 7241, each filed a Complaint asserting claims under Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 (the "Exchange Act"), as well as a pendent claim for common law fraud;

WHEREAS, on January 14, 2014, the Plaintiffs in *North Sound Capital LLC, et al. v. Merck & Co., Inc., et al.*, No. 3:14 Civ. 242 and in *GIC Private Limited v. Merck & Co., Inc., et al.*, No. 3:14 Civ. 241, each filed a Complaint asserting claims under Sections 10(b) and 20(a) of the Exchange Act, as well as a pendent claim for common law fraud;

WHEREAS, all four Complaints share a common nucleus of operative fact and are subject to the same threshold legal question as to whether they are barred by the five-year statute of repose that governs claims asserted under the Exchange Act;

WHEREAS, by Stipulations and Orders filed on March 7, 2014, October 17, 2014, and December 19, 2014, the Court recognized that it would promote efficiency to present the threshold timeliness question for resolution prior to addressing other potential grounds for dismissal under Federal Rules of Civil Procedure 12 and 9(b), given the possibility that such other potential grounds for dismissal would be moot if the Court finds the federal securities claims in these cases to be time-barred;

WHEREAS, by Stipulations and Orders filed on March 7, 2014, October 17, 2014, and December 19, 2014, the Court agreed that, if any part of that threshold timeliness motion were denied, Defendants may move to dismiss on any ground not asserted therein, including any ground available under Rules 12 and 9(b) of the Federal Rules of Civil Procedure;

WHEREAS, by Opinion and Order filed on August 26, 2015, the Court denied Defendants' motions to dismiss Plaintiffs' federal securities claims based upon the threshold timeliness question, and also denied Defendants' motions to dismiss Plaintiffs' common-law fraud claims based upon Plaintiffs' alleged failure to adequately plead reliance; and

WHEREAS, Defendants believe that the threshold timeliness question should be certified to the Court of Appeals because it presents a "controlling question of law as to which

there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation," 28 U.S.C. § 1292(b), and Plaintiffs disagree with Defendants' position;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by
and between counsel for the parties, that:

1. Defendants shall have until September 30, 2015 to move this Court for certification of one or more controlling questions of law to the Third Circuit Court of Appeals pursuant to 28 U.S.C. § 1292(b).
2. Plaintiffs shall have until November 8, 2015 to file any opposition papers.
3. Defendants shall have until November 23, 2015, to file any reply papers.
4. Pending resolution of the certification motion, Defendants shall have no obligation to file an Answer to the Complaints.

Dated: September 4, 2015

KIRBY McINERNEY LLP

By: Karina Kosharskyy / U.S.

Karina Kosharskyy
Daniel Hume
Ira Press
Meghan J. Summers
825 Third Avenue
New York, NY 10022
(212) 371-6600
kosharskyy@kmlp.com

Attorneys for Plaintiffs

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: Daniel J. Kramer/DJ

Theodore V. Wells, Jr.

Daniel J. Kramer

Charles E. Davidow

Daniel J. Leffell

1285 Avenue of the Americas

New York, New York 10019-6064

(212) 373-3000

twells@paulweiss.com

Attorneys for Defendants

SO ORDERED

9/8/15
Dated

Freda L. Wolfson
Honorable Freda L. Wolfson
United States District Judge